



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

TJR  
Docket No: 5429-99  
29 February 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 10 October 1968 at the age of 18. Your record reflects that on 27 July 1970 you received nonjudicial punishment (NJP) for an 11 day period of unauthorized absence (UA). The punishment imposed was forfeitures totalling \$38, restriction for 14 days, and extra duty for 10 days. On 18 December 1970 you were convicted by special court-martial (SPCM) of a 127 day period UA. You were sentenced to reduction to paygrade E-2, confinement at hard labor for 45 days, hard labor without confinement for 45 days, and \$200 forfeiture of pay. The confinement at hard labor was suspended for six months.

Your record further reflects that on 3 March 1971 you received NJP for absence from your appointed place of duty and were awarded \$25 forfeitures of pay, which was suspended for six months. Shortly thereafter, on 28 March 1971, you began a 39 day period of UA that was not terminated until you were apprehended by civil authorities on 6 May 1971. On 1 July 1971 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing period of UA. Your

record shows that prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request was granted and your commanding officer was directed to issue you an undesirable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 23 October 1971 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, combat history, and your contention that you would like your discharge upgraded. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your frequent and lengthy periods of UA, and your subsequent request for immediate discharge to avoid trial for this offense. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director